

**SUPREME COURT OF SEYCHELLES**

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[2022] SCSC ...  
CM 97/2022

In the matter between:

**COMMISSIONER OF POLICE**  
**(herein represented by the Attorney General)**  
*(rep. by Mrs. Thompson )*

**Applicant**

and

**MUKESH VALABHJI**  
*(rep. by Mr. Bonte )*

**1<sup>st</sup> Respondent**

**LAURA VALABHJI**  
*(rep. by Mrs. Aglae)..*

**2<sup>nd</sup> Respondent**

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**Neutral Citation:** *Commissioner of Police vs Valabhji and Anor* (CM 97/2022) [2022] SCSC (10 August 2022)  
**Before:** Burhan J.  
**Summary:** Application under Section 26 (3) of the Prevention of Terrorism Act (CAP 179).  
**Heard:** 01 August 2022.  
**Delivered:** 10 August 2022.

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**ORDER**

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**BURHAN J**

[1] On the 28<sup>th</sup> of June 2022, the Applicant represented by the Attorney General filed an ex-parte motion moving Court for an order for detention of the property Morne Blanc (Title Number B39) for a period of sixty days pursuant to section 26 (4) of the Prevention of Terrorism Act (PTA) and that Detective Sergeant Davis Simeon be appointed to take control and manage the property for the reasons set out in the attached affidavit.

[2] Section 26 of the PTA in its entirety reads as follows;

- (1) Where the Commissioner of Police has reasonable grounds for suspecting that any property has been, or is being, used to commit an offence under this Act, the Commissioner may seize the property.*
- (2) The Commissioner of Police may exercise powers under subsection (1), whether or not any proceedings have been instituted for an offence under this Act in respect of that property.*
- (3) The Commissioner of Police shall as soon as practicable after seizing any property under subsection (1) make an application, ex-parte and supported by an affidavit, to a judge of the Supreme Court for a detention order in respect of that property.*
- (4) A judge to whom an application is made under subsection (3) shall not make a detention order in respect of the property referred to in the application unless the judge -*

  - (a) has given every person appearing to have an interest in the property a reasonable opportunity of being heard;*
  - (b) has reasonable grounds to believe that the property has been, as is being used to commit an offence under this Act.*
- (5) Subject to subsection (6), every detention order made under subsection (4) shall be valid for a period of 60 days and may, on application, be renewed by a judge of the Supreme Court for a further period of 60 days until such time as the property referred to in the order is, where applicable, produced in Court in proceedings for an offence under this Act in respect of that property.*
- (6) A judge of that Supreme Court may release any property referred to in a detention order made under subsection (4) if –*

  - (a) the judge no longer has reasonable grounds to suspect that the property has been or is being used to commit an offence under this Act; or*

*(b) no proceedings are instituted in the Supreme Court for an offence under this Act in respect of that property within 6 months of the date of the detention order.*

*(7) A seizure of any property by the Commissioner of Police under subsection (1) shall be deemed not to be a contravention of section (8),*

*(8) No civil or criminal proceedings shall lie against the Commissioner of Police for a seizure of property made in good faith under subsection (1).*

[3] The Application based on Section 26 set out above, entitles the Commissioner of Police to as soon as practicable after seizing any property under subsection (1) make an application ex-parte supported by an affidavit to a judge of the Supreme Court, for a detention order in respect of said property. Section 26 (4) (a) further sets out that the judge should, prior to the issuing of a detention order, give every person appearing to have an interest in the property, a reasonable opportunity of being heard.

[4] Accordingly, the Respondents herein were given an opportunity of being heard. The 1<sup>st</sup> Respondent according to the application is the owner of the land parcel B29 situated at Morne Blanc whilst the 2<sup>nd</sup> Respondent is the wife of the 1<sup>st</sup> Respondent who resides with him on the said premises.

[5] During the submissions of both Respondents, it was brought to the notice of Court that the Respondents have a daughter and her rights would be affected, if a detention order was to be given in respect of the house and property situated on the said parcel of land. At page 14 of their joint written submissions dated 1<sup>st</sup> of August 2022, both learned Counsel refer to the fact that the daughter has the same rights, as if not more rights, than the 2<sup>nd</sup> Respondent being an occupier and resident of the said premises and only child of the owner of the premises, she has an overriding interest therein and thus is an interested party in respect of a Section 26 application (PTA). In their joint submissions, both counsel for the Respondents, submitted that an opportunity should be given to her to be heard as well.

- [6] It is the contention of learned Counsel for the Applicant Mr. Powles that the daughter of the Respondents is not in the island since December 2022 as borne out by the attached document from the Department of Immigration to his submissions dated 1<sup>st</sup> August 2022. Learned Counsel for the Applicant submits that as she is not in the jurisdiction, there is in no way in which the Applicant could seek her views on this application.
- [7] Giving due consideration to the submissions made by both parties on this issue, I am inclined to agree with learned Counsel for the Applicant that as the daughter of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent is not in the jurisdiction as proven by the Immigration records, no notice can be served on her and the law does not create an obligation upon the Applicant to notify any such interested parties.
- [8] This Court could however take notice of the fact that even though both Respondents are in remand in the main case CR.CO 04/2022 when the said case came up before this Court, an opportunity was given to the 2<sup>nd</sup> Respondent and earlier to the 1<sup>st</sup> Respondent to speak to their daughter once a week by phone. Therefore, this Court is of the view that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are in a position to contact their daughter and seek her views on this application. Further both Attorneys at Law who in their joint submissions so keenly brought her interest to the notice of Court may also do so. If the daughter of the Respondents wishes to be a party to this application, she may proceed to make avail of the opportunity of being heard and if unable to attend in person, may have an Attorney at Law or one of the Respondents represent her interests. Additional submissions if any, to be filed on behalf of her should be done so prior to the next date of this case i.e. the 26<sup>th</sup> of August 2022.
- [9] Therefore, accordingly, in the wider interest of justice, I proceed to grant an opportunity to the daughter of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents of being heard in respect of this application prior to deciding on the merits of this case.
- [10] I also make order that a copy of the seizure order and a copy of the application for the detention order be affixed in a prominent place on the said property (Morne Blanc Title Number B39) by the Applicant and a report tendered to Court.

[11] Case to be mentioned on the 26<sup>th</sup> of August 2022 at 2.00 p.m. A copy of this order to be given to learned Counsel for the Applicant and Respondents.

Signed, dated and delivered at Ile du Port on this 10<sup>th</sup> day of August 2022.

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M. Burhan J